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(202) 551-1725
carlnorthrop@paulhastings.com

May 24, 2007

57739.00001

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: Written *Ex Parte* Presentation
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911
Emergency Calling Systems, CC Docket No. 94-102

Dear Ms. Dortch:

By this letter, MetroPCS Communications, Inc. ("MetroPCS")¹ is responding to press reports indicating that the Commission is considering a declaratory ruling that would impose additional obligations on wireless carriers by requiring that Enhanced 911 ("E911") compliance be measured at the PSAP level? MetroPCS, like Verizon Wireless, other wireless carriers and trade associations that have filed *ex parte* letters in the above-referenced docket, is "committed to working with the Commission and public safety groups to optimize the capabilities of wireless E911 services."³ However, MetroPCS also agrees that a declaratory ruling on this topic rendered without the benefit of a notice of proposed rulemaking and a full record would be "unwise as well as unlawful."⁴

Based on the current record — or, more precisely, the lack thereof — a declaratory ruling that E911 compliance must be measured at the PSAP level would be unwise and could result in unintended consequences. As CTIA – The Wireless Association® observes, "[i]n many communities across the nation, there is simply no E-911 capability to test." The

¹ For purposes of this letter, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² See, e.g., TR Daily, "Martin Circulates Declaratory Ruling, FNPRM Addressing 'E911' Accuracy," April 18, 2007 (indicating that Chairman Martin's office had circulated a declaratory ruling and further notice of proposed rulemaking addressing E911 location-accuracy issues, including a request filed by the APCO International that that location accuracy should be measured at the PSAP level).

³ Letter from Dobson Communications Corporation, Rural Cellular Association, T-Mobile USA, Inc., and Verizon Wireless, filed in CC Docket No. 94-102, at 1 (May 8, 2007) (the "Verizon Wireless Letter")

⁴ Id. See also CTIA – The Wireless Association®, *Ex Parte* Presentation in CC Docket No. 94-102, filed May 3, 2007 ("CTIA May 3 Letter"); CTIA – The Wireless Association®, *Ex Parte* Presentation in CC Docket No. 94-102, filed April 27, 2007.

⁵ CTIA May 3 Letter at 1.

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Commission has built no record upon which to conclude that measuring E911 compliance at the PSAP level would be feasible, let alone beneficial. Further, any rule change would require all parties to determine how such compliance would be measured and whether there would be a period of time for carriers to come into compliance. As the Commission knows, MetroPCS was one of the few carriers in full compliance with the requirement that 95 percent penetration of location-capable handsets be achieved among its subscribers by December 31, 2005. However, since the areas served by individual PSAPs vary significantly in terms of population densities, terrain, clutter affecting radio reception, etc., a full record is necessary to determine the appropriate study area in which to measure E911 compliance before imposing liability on carriers for failing to meet the requirements. MetroPCS therefore urges the Commission to engage all relevant stakeholders — particularly the wireless industry and the public safety community—in order to ensure that the rules adopted by the Commission serve the vital interest of ensuring E911 accuracy while avoiding any unnecessary burdens on wireless carriers.

A declaratory ruling that E911 compliance must be measured at the PSAP level also would be unlawful at this stage. As other commenters have noted, this could not properly be characterized as a “clarification” but rather would constitute a substantive change to the Commission’s rules because those rules currently impose no specific geographic area for measuring E911 compliance, and the Commission made a deliberate choice not to impose specific measurement requirements.⁶ Even APCO observes that “the FCC accuracy parameters are not applicable at the PSAP level,”⁷ implicitly recognizing that imposing PSAP-level measurement requirements would constitute “substantive changes in prior regulations.”⁸ New rules that work substantive changes in prior regulations are subject to the procedures mandated by the Administrative Procedures Act (“APA”),⁹ so public notice and comment in accordance with the APA clearly are required before the Commission adopts a requirement that E911 compliance be measured at the PSAP level.

For the foregoing reasons, and for those set forth in the Verizon Wireless Letter, MetroPCS respectfully requests that the Commission postpone the adoption of any substantive changes in its E911 rules, such as those reportedly under consideration, until public notice and comment have taken place in accordance with the APA.

⁶ See, e.g., Verizon Wireless Letter at 4-7. See also *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, 17426 (1999) (noting that “. . . the Commission declined to adopt specific methods for measuring compliance with the E911 rules, relying instead upon the parties to resolve technical issues in good faith . . .”).

⁷ “Final Report: An Assessment of the Value of Location Data Delivered to PSAPs with Enhanced Wireless 911 Calls,” APCO Int’l (April 2007).

⁸ See *Sprint Cop. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003); see also *SBC, Inc. v. FCC*, 414 F.3d 486, 497 (2005) (stating that rules that “work substantive changes in prior regulations” are subject to the notice and comment requirements of the APA) (internal citations omitted).

⁹ See, e.g., *American Mining Congress v. Mine Safety & Health Administration*, 995 F.2d 1106 (D.C. Cir. 1993); *United States v. Picciotto*, 875 F.2d 345 (D.C. Cir. 1989).

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MetroPCS takes its E911 obligations very seriously and would expect to be an active participant in any ~~future~~ proceeding designed to review the E911 compliance criteria. **MetroPCS** will be particularly interested in helping the Commission and the industry come up with workabl standards to govern carrier testing procedures so that E911 obligations **can be fulfilled** in a responsible, cost-effective manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl W. Northrop', written over a large, faint, circular watermark or background mark.

Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Mark Stachiw, Senior Vice President, General Counsel & Secretary,
MetroPCS Communications, Inc.